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DA 06-2510

Released: December 14, 2006

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF TELSTRA INCORPORATED FROM THE COMMONWEALTH OF AUSTRALIA TO SHAREHOLDERS OF TELSTRA CORPORATION LIMITED

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 06-218

Comments Due: December 28, 2006

Reply Comments Due: January 4, 2007

On December 4, 2006, Telstra Incorporated ("Telstra USA"), the Commonwealth of Australia ("Commonwealth"), and Telstra Corporation Limited ("Telstra," together "Applicants") filed an application, pursuant to section 63.04 of the Commission's rules,¹ requesting authority to transfer control of Telstra USA from the Commonwealth to the shareholders of Telstra, which is the ultimate parent company of Telstra USA.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment under 63.03(b)(2)(i) of the Commission's rules because the proposed transaction will result in (1) Telstra and its affiliates having a market share in the interstate, interexchange market of less than 10 percent; (2) Telstra and its affiliates providing competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and (3) neither Telstra nor any of its affiliates are dominant U.S. carriers with respect to any service.³

¹ 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² Applicants are also filing applications for transfer of control associated with authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications. On Dec. 11, 2006, the Applicants filed a supplement to the domestic section 214 application. *See* Letter from Randall W. Sifers, Counsel to Telstra, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 06-218 (filed Dec. 11, 2006).

³ 47 C.F.R. § 63.03(b)(2)(i).

Telstra USA, a Delaware corporation, is a wholly-owned subsidiary of Telstra Holding Pty Limited ("Telstra Holdings"), a corporation organized under the laws of Australia to serve as a holding company. Telstra Holdings is wholly-owned by Telstra. Telstra USA is authorized to provide resold interexchange service on an intrastate basis in California, New York, and Texas. Telstra USA also provides long distance, frame relay, ATM, data transport, private line, and other value added services on an interstate and international basis, as well as providing many such services on an intrastate basis in California, New York, and Texas. Telstra USA provides its services to enterprise and other business customers.

Telstra, an Australian publicly-held corporation, is Australia's leading telecommunications and information services company. It provides local, long distance, and international services to most homes and businesses in Australia; local, long distance, and international service to and from Australia; wireless cellular telecommunications services; broadband services to wholesale and retail customers; and cable television distribution services. Applicants state that neither Telstra, nor any of its affiliates, hold a 10 percent or greater direct or indirect ownership interest in any licensed U.S. telecommunications carrier other than Telstra USA.

On November 24, 2006, the Commonwealth's holdings in Telstra decreased from 51.8 percent to approximately 22 percent pursuant to a global offering of Telstra shares to institutional investors. Applicants state that the Commonwealth's holdings may decline to 17 percent of Telstra, depending upon the exercise of certain options by the institutional investors in the United States and the rest of the world. Although the Commonwealth's holdings in Telstra have declined to less than a majority share, the Commonwealth maintains *de facto* control over Telstra through rights accorded to it through the Telstra Act and other Commonwealth legislation.⁴ Applicants further state that no other person or entity directly or indirectly holds a 10 percent or greater ownership interest in Telstra or Telstra USA.

No later than February 24, 2007, the Applicants plan on transferring the Commonwealth's remaining interest in Telstra to the Future Fund Board.⁵ The Future Fund, which is controlled by the Future Fund Board, was established by the Commonwealth's Future Fund Act of 2006, and is an Australian investment fund that was formed to strengthen the Commonwealth's long-term finances by providing for its unfunded superannuation liabilities.

⁴ The Applicants have indicated that the transfer of control that occurred on November 24, 2006 was *pro forma* and that they plan to notify the Commission of this transfer, pursuant to the Commission's regulations. See 47 C.F.R. § 63.24(f). Applicants state that the Telstra Act is the Australian law that governs the formation and management of Telstra. In September 2005, the Commonwealth amended the Telstra Act to enable the Commonwealth to undertake a sale of all or part of its stake in Telstra. Certain provisions of the Telstra Act providing the Commonwealth with oversight authority over Telstra will cease to apply when the Commonwealth's shareholding falls to 15 percent or less.

⁵ The transfer to the Future Fund Board will take place in several stages, including an escrow stage of two years. After that time, shares in Telstra owned by the Future Fund will be listed on the Australian Stock Exchange, and the Future Fund will be required to sell down the shares over time and reinvest the proceeds.

The Future Fund Board is a separate legal entity from the Commonwealth, is responsible for investment decisions of the Future Fund, and holds the Future Fund's assets for and on behalf of the Commonwealth. The Future Fund Act of 2006 allows the Commonwealth to transfer Commonwealth-owned assets, such as the Commonwealth's interest in Telstra, to the Future Fund Board. According to the Applicants, the Future Fund Board does not hold a 10 percent or greater ownership interest, direct or indirect, in any licensed U.S. telecommunications carrier.⁶

Applicants state that the Commonwealth's de facto control of Telstra will not transfer to the Future Fund Board since none of the special statutory rights possessed by the Commonwealth through the Telstra Act will be conveyed to the Future Fund Board. Thus, the Future Fund Board will have rights and obligations like any other Telstra shareholder and control will be dispersed among all Telstra shareholders. Applicants further state that it is not anticipated that there will be any entity other than the Future Fund Board that holds 10% or more of the shares in Telstra following the transfer of shares to the Future Fund Board.

Applicants state that the proposed transaction serves the public interest because the Commonwealth of Australia has determined that its continued participation as the controlling investor in Telstra is no longer consistent with its objectives. In addition, Applicants assert that the proposed transfer will promote private sector ownership of telecommunications carriers in a manner consistent with the U.S. public interest. The Applicants also state that the public offering of the Commonwealth's shares enables Telstra USA to continue providing telecommunications services in the U.S. market to the ultimate benefit of U.S. consumers, and that, because the proposed transaction will not involve a transfer of operating authority, assets, or customers, it will be seamless to Telstra USA's customers.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments on or before December 28, 2006 and reply comments on or before January 4, 2007.**⁷ Unless otherwise notified by the Commission, Applicants are permitted to transfer the assets and related control on the 31st day after the date of this notice.⁸ Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

⁶ Telstra holds a 50 percent indirect negative ownership interest in Reach Ltd., a foreign carrier that is authorized to provide international telecommunications services in the U.S.

⁷ See 47 C.F.R. § 63.03(a).

⁸ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

You may submit comments, identified by the above noted docket number, by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Federal Communications Commission's Web Site:** <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- **People with Disabilities:** Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, www.bcpweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Myrva Charles Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C212, Washington, D.C. 20554; e-mail: myrva.charles@fcc.gov;
- (3) Gail Cohen, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-5-C111, Washington, D.C. 20554; e-mail: gail.cohen@fcc.gov;
- (4) David Krech, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-A664, Washington, D.C. 20554; email: david.krech@fcc.gov; and
- (5) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: james.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpweb.com.

For further information, please contact Myrva Charles, at (202) 418-1506, or Gail Cohen at (202) 418-0939.

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